

April 2020

MEMORANDUM

RE: Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Summary

The COVID-19 pandemic has had cascading impacts on the infrastructure sectors that engineers work on – from declining infrastructure revenue sources, such as state DOT and transit agency budgets, to delayed projects across the U.S. The Coronavirus Aid, Relief, and Economic Security (CARES) Act is the third piece of federal legislation meant to address the pandemic. The legislation was carefully negotiated by Senate Republicans and Democrats, as well as the Administration, and was signed into law on Friday, March 27th. The \$2 trillion package is meant to bolster the lagging economy by providing relief to those industries most impacted, including airports and transit agencies. It is important to note that the CARES Act was developed to provide immediate relief to struggling sectors, and therefore the allocated funding is meant to cover operating expenses and not for capital spending needs. While this is different from past economic stimulus bills, such as the legislation passed to combat the 2008 economic crisis, further legislation to address capital spending needs is under consideration.

Background

The final bill includes \$25 billion for transit grants, \$1 billion for [Amtrak](#), \$10 billion for the grants-in-aid for airports/Airport Improvement Program), and \$56 million for the [Essential Air Service](#) (EAS). Additionally, the bill includes relief for small businesses and a long-time ASCE priority, a fix for the Harbor Maintenance Trust Fund. Details on ASCE priorities that were included in the final bill are below:

Public Transit

- \$25 billion is included for public transit formula grants to prevent, prepare, and respond to the rapidly spreading virus.
- Of the \$25 billion, \$13.8 billion is provided to urban transit needs (Urbanized Area Formula Program), \$12 billion for rural transit needs (Rural Area Program), \$7.5 billion for state of good repair, and \$1.7 billion would be directed towards fast-growth and high-density states. The Federal Transit Administration (FTA) was required to allocate these funds within seven days of the bill's enactment.
- The Federal Transit Agency (FTA) will generally consider all expenses normally eligible under the Urbanized Area Formula Program and Rural Area Program that are incurred on or after January 20, 2020 to be in response to economic or other conditions caused by COVID-19 and thus eligible

under the CARES Act. Grants using funds made available under the CARES Act must receive Department of Labor certification.

- All the normal Urbanized Area Formula Program and Rural Area Program requirements apply to funds made available under the CARES Act, with the following exception: Transportation Improvement Program (TIP) or the Statewide Transportation Improvement Program (STIP). CARES Act funds used to pay for operating expenses do not need to be included in the TIP/STIP. CARES Act funds used to pay for capital expenses for emergency relief do not need to be included in the TIP/STIP unless the projects are for substantial functional, locational, or capacity changes.
- The federal share for all grants awarded under the CARES Act is up to 100%, at the discretion of the recipient. Funds are available until expended. There is no lapse date to obligate funds available under the CARES Act. Transit systems are encouraged to spend funds expeditiously to respond to local needs.
- Grant recipients are directed to take appropriate measures to adjust operations in order to reduce the spread of COVID-19.
- These directed funds are to be used for operating cost reimbursement, lost revenue, purchasing personal protective equipment, and applicable preventive maintenance such as vehicle cleaning.

Amtrak

- \$1 billion is provided for Amtrak grants with \$492 million being directed towards the Northeast Corridor and \$526 million being directed to the National Network.
- States are not required to pay Amtrak more than 80% of their supported route payments and \$239 million is set aside and made available to Amtrak in lieu of these payments. This will help mitigate the 28 State-supported intercity passenger rail routes, where State governments would otherwise be required to make up ticket revenue shortfalls.

Aviation

- \$10 billion is directed toward grants-in-aid for airports through the Airport Improvement Program. \$100 million is set aside for general aviation airports. A grant application is required, however; sponsors do not need to apply for increased federal share of fiscal year (FY) 2020 AIP or supplemental discretionary grants. FAA will use the Office of Management and Budget's (OMB) SF-424, Application for Federal Assistance.
 - \$10 billion is divided into four main groups: 100% federal share for the 2020 AIP grants (determined by the category of airport and the airport development goal), \$7.4 billion for commercial service airports, up to \$2 billion is available for large, medium, and small hub airports and non-hub primary airports for any purpose for which airport revenues may be lawfully used, and \$100 million is available to general aviation airports. Funds are available at the 100% federal share.
 - Funds are available until expended and there is no deadline to obligate funds available under the CARES Act. The FAA intends to award grants on an expedited basis and

encourages airport sponsors to spend funds quickly to reduce the adverse impacts of COVID-19. Grants for operation expenses may not be included for activities prior to January 20, 2020.

- \$56 million is included for the Essential Air Service.

In addition to the direct investment into our nation's aviation infrastructure, the CARES Act includes a new loan and loan guarantee program for the aviation industry which includes:

- \$25 billion for loans and loan guarantees to passenger air carriers
- \$4 billion for loans and loan guarantees to cargo air carriers
- \$17 billion for loans and loan guarantees to "businesses critical to maintaining national security"

Harbor Maintenance Trust Fund

- Includes a provision that would unlock the Harbor Maintenance Trust Fund (HMTF), a long-time ASCE priority.
- The legislative language targets all "annual receipts and interests" for the HMTF, meaning it ensures future HMTF revenues – an expected \$24.5 billion over the next decade – are used for their intended purpose of dredging the nation's ports and harbors.
- The provision will not allow Congress to retroactively spend from the fund's current \$9.3 billion balance.

Businesses

- Allows for private sector employers to receive a tax credit to offset the costs of providing paid sick leave to employees, but public sector employers, including public drinking water and wastewater utilities, are ineligible for the same tax credit. ASCE is working with Congress to fix this provision and ensure that public employers, including public drinking water and wastewater utilities, can receive this same tax credit as private companies.
- Creates the Paycheck Protection Program:
 - Authorizes \$349 billion to be spent from February 15, 2020 through December 31, 2020 to provide loans of up to \$10 million to small businesses.
 - All business types may be eligible, including nonprofits, sole proprietors, and other self-employed individuals, provided that they employ up to 500 people and meet other Small Business Administration eligibility requirements.
 - Specific allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.
 - The amount of the loan spent within the 8 week period after receiving the loan may be converted to a grant (and therefore not repaid) if the recipient uses it for only those allowable uses, subject to certain salary requirements. This is to encourage businesses to retain their employees and use the funds as intended.

- The U.S. Treasury Department will create a program to provide financing to banks/ lenders to make direct loans to eligible businesses (including nonprofits) with between 500 and 10,000 employees.
- Allows any individual employed for at least 30 days by a business with under 500 employees to take up to 12 weeks of job-protected leave to allow an employee, who is unable to work or telework, to care for the employee's child (under 18 years of age) if the child's school or place of care is closed or the childcare provider is unavailable due to a public health emergency.
- Employers with 25 or more employees will have the same obligation as under traditional FMLA to return any employee who has taken Emergency FMLA to the same or equivalent position upon the return to work. Employers with fewer than 25 employees are generally excluded from this requirement.

ASCE Position

Throughout the development of the CARES Act, ASCE weighed in in support of economic relief and investments in our nation's infrastructure, as well as for small businesses throughout the country. All of those letters are now on the website. Areas that ASCE has weighed in on included urging relief for airports and transit, as well as the extension or restoration of critical infrastructure financing tools, the inclusion of a robust surface transportation reauthorization, clarification of essential infrastructure guidance, federal assistance for drinking water and wastewater utilities, and government employee sick leave. ASCE was please to see many of these provisions included in the final bill and urged Key Contacts to reach out to their Member of Congress and thank them for supporting the CARES Act.

Further Action

As Congress looks to the next phase of relief for the COVID-19 pandemic, many on Capitol Hill and within the Administration agree that infrastructure investment will be a key element for economic recovery. To guide legislative efforts, ASCE has [sent a letter](#) to Congressional leadership and President Trump outlining key investment priorities. In that request, ASCE urged Congress to include reauthorizations of surface transportation programs, the Water Resources Development Act, and National Institutes of Standards and Technology, as well as an emphasis on resilience and increase investment in all sectors of the nation's infrastructure. ASCE will continue to work closely with Congressional offices on these requests as Congress develops further legislation to contend with the pandemic.

While Members of Congress remain in their districts, work on Capitol Hill on further relief and recovery legislation continues. The next immediate package will likely continue to focus on greater relief efforts, however as Congress turns to legislation focused on recovery in the early summer, infrastructure is expected to be a primary focus. It should be noted however, that further relief for infrastructure sectors and agencies, such as state Departments of Transportation, could see assistance before a bigger infrastructure push this summer. For example, the Association for State Highway and Transportation Officials (AASHTO), has requested \$50 billion in emergency relief, similar to relief that airlines and transit agencies received in the CARES Act, to combat dramatic revenue losses.

For questions, please contact the ASCE Government Relations team.

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